



CITY OF EDMONDS

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HEARING EXAMINER

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BEFORE THE HEARING EXAMINER FOR THE CITY OF EDMONDS

Emily Terrell, Hearing Examiner Pro Tem

RE: Burnstead Construction Company Woodway Elementary Plat Re-Hearing P-2007-17, PRD-2007-18	ORDER ON REQUEST FOR RECONSIDERATION Requestor: City of Edmonds, WA
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INTRODUCTION

The Burnstead Construction Company received preliminary approval from the City of Edmonds in 2007 (*see* Re-Hearing Exhibit 1, Attachments for 2007 numbers 2-4 and 12-15), which was subsequently appealed to Superior Court and again appealed to the Court of Appeals. The Appellate Court remanded the plat/PRD for further proceedings before the Hearing Examiner, limiting the proceedings before the Hearing Examiner to the issues concerning: 1) the drainage plan, 2) the perimeter buffer, and 3) open space while affirming the Applicant's burden on remand to demonstrate compliance with all applicable laws current at the time of vesting (Re-Hearing Exhibit 1, Attachment 2012-1). On March 7, 2012, the Hearing Examiner issued a decision on the above-referenced matter (Re-Hearing Decision). The Hearing Examiner granted, subject to conditions, the Burnstead Construction Company's request for approval of revised PRD and preliminary plat applications on 5.61 acres of land within the City of Edmonds located at 23708 104th Avenue West.

On March 15, 2012, the City of Edmonds, pursuant to ECDC 20.06.010, filed a Request for Reconsideration (Request). The Request seeks clarification on three issues related to 1) the summary of the oral testimony of Jerry Shuster, City of Edmonds Stormwater Engineering Manager, 2) a typographical error in Conclusion of Law #5 and 3) the 'logic underlying the characterization' of the issue of perimeter buffer/setback in Conclusions of Law #'s 9, 10 and 11.

The Hearing Examiner finds that the City's Request was timely filed and that the City has standing to bring such a request.

DISCUSSION

The City asserts the following errors and/or omissions with the Hearing Examiner's March 7, 2012 Re-Hearing Decision (Request):

1. Testimony of Jerry Shuster, Stormwater Engineering Manager: The Hearing Examiner asked Mr. Schuster how the proposed stormwater infiltration system of the plat would interact with the public infiltration systems that he just spoke about (Hickman Park system and the system south of 107th Ave, both of which are owned by the City). Mr. Shuster responded that if it (the plat infiltration system) is designed, constructed, and maintained properly, the water from the development will be infiltrated on the private properties in this development and will not be connected to the City system.

Infiltration systems are always designed with an overflow in case the design storm is exceeded (in this case the 100-year recurrence event). Mr. Shuster's response to the Hearing Examiner's question was directed at the Hickman Park infiltration system only. The connection of the plat's infiltration system overflow will be resolved during the final design and will not include a direct connection to the city's Hickman Park infiltration system, but the overflow may be connected to the City's overall stormwater system.

Examiner Response: The March 7, 2012 Re-Hearing Decision summarized Mr. Schuster's oral testimony (in part) as, "Mr. Shuster stated that if the proposed system is designed, constructed and maintained properly, it will have no effect in terms of stormwater on adjacent properties." At approximately 55 minutes into the recording of the Re-Hearing, the Examiner inquires of Mr. Shuster to the effect of how this [development's] private infiltration system will interact with the proposed public infiltration systems. Mr. Shuster responded, "If it is designed, constructed and maintained properly, the water from this development will be infiltrated on the private property within this development and will not be connected to the City system." The response, as it was presented at the Re-Hearing, was to a direct inquiry into the specific interaction between the proposed private infiltration system with respect to the existing and proposed public improvements. It does not appear to be qualified to Hickman Park.

The more pertinent issue of this clarification is the interaction between the private and public stormwater systems. Both Kernen Lien, Associate Planner for the City of Edmonds, and Jeanie McConnell, Engineering Program Manager for the City of Edmonds, stated, in effect, that the stormwater design at this phase is preliminary and that the Applicant's burden at this preliminary phase is to provide a 'feasible' stormwater design. The civil construction plans will be reviewed during the final design of the utility improvements for compliance with

the City's stormwater code (then-current ECDC 18.30). The Examiner acknowledges the City's clarification with respect to the proposed private infiltration system's overflow. However, the clarification has no direct effect on the approvability of the Applicant's request because the requirements for infrastructure design at the preliminary phase are based on 'feasibility' rather than exact engineering specifications. The final design of the stormwater system is not at issue here. The evidence does not suggest there has been an error of procedure, an error of law or fact, or an error of judgment. The evidence does not represent the discovery of new evidence that was not known and could not, in the exercise of reasonable diligence, have been discovered. The clarification has no effect on and requires no modification of the Re-Hearing Decision.

2. Conclusion of Law #5: Under conclusion of law #5 it is noted that the application is vested to the 2007 stormwater management regulations and references ECDC 18.35. The correct reference to stormwater regulation should be ECDC 18.30. There is no Chapter 18.35 in the Edmonds Community Development Code.

Examiner Response: The City is correct to note the typographical error in Conclusion of Law #5. The correct citation, to ECDC 18.30, is listed in six other locations within the Re-Hearing Decision. The typographical error represents an Error of Fact (ECDC 20.06.010(2)). Pursuant to ECDC 20.06.010(H), the Re-Hearing Decision will be modified to reflect the correct code citation.

3. Conclusions of Law #'s 9, 10, and 11 – Perimeter buffer/setbacks: The logic underlying the characterization of this issue is reversed. The requirement of a perimeter buffer is triggered when the setbacks of perimeter lots vary from the standard setbacks normally required in the zone. The revised application chose to apply the standard RS-8 zoning setbacks to the perimeter lots. Since standard setbacks were applied, a perimeter buffer is not required pursuant to ECDC 20.35.050.C. Thus, by applying standards RS-8 zoning setbacks, the application is compliant with ECDC 20.35.050.C.1 and the perimeter buffer identified in ECDC 20.35.050.C.2 is not required. This is different than saying the perimeter buffer was eliminated, thereby resulting in a change in the perimeter lot setbacks.

Examiner Response: The Re-Hearing Decision stated the following:

Conclusion of Law #9: The revised application has resulted in a change to the proposed building setbacks. Due to the elimination of the perimeter buffer, the application has been revised to reflect alternative development standards for building setbacks for only the interior lots. The interior lots will retain the alternative building setbacks approved in the 2007 Hearing Examiner decision while the exterior lots will be built to reflect standard building setbacks in the RS-8 zone.

Conclusion of Law #10: The revised application eliminates the perimeter buffer and alters the setbacks on the exterior lots to conform to the

standard setbacks allowable in the RS-8 zone to comply with the design criteria in ECDC 20.35.050. ... The two alternative development standard establishment criteria impacted by the revised application are the provision of a perimeter buffer (ECDC 20.35.040(A)(1)) and the exterior setbacks (ECDC 20.35.040(B)). The revised application has removed any request for a reduction in the setbacks from exterior lot lines.

Conclusion of Law #11: As in Conclusion of Law #10, a limited number of the PRD decision criteria are affected by the revision of the original application. The revised application eliminates the perimeter buffer. In doing so, the Applicant altered the setbacks on the exterior lots to conform to the standard setbacks allowable in the RS-8 zone. The project now complies with ECDC 20.35.050(C). In the original application, the Applicant overlapped the perimeter buffer with the required open space. Both the Superior Court and the Appellate Court pointed to the plain language of the code that prohibited the inclusion of a required landscape buffers from the open space total. The lot layout has not been altered since 2007 with the exception of removing the perimeter buffer and altering the exterior lot setbacks to meet the standard setbacks in the RS-8 zone. The resulting four open space tracts, without the landscape buffer, are sufficient to meet the 10% open space requirement.

The purpose of ECDC 20.35.030(A)(1) is to provide opportunities to alter the bulk development standards by compliance with ECDC 20.35.040(B) and 20.35.050(C). ECDC 20.35.050(C) is clear in that it requires a proposal to either comply with the bulk zoning criteria of the underlying zone or provide a landscape buffer, open space or passive use recreational area at least equal to the depth of the rear yard setback along the exterior property line. The Examiner did not misunderstand this requirement in her Re-hearing Decision. The Hearing Examiner's Re-Hearing Decision recognized that the re-hearing on remand was based on a revised application. The original 2007 Hearing Decision was based on an application that was required to provide a perimeter buffer because the Applicant had chosen to alter the setback requirements of the underlying zone for exterior lots. The revised application reverted to the underlying zone setbacks for exterior lots and thereby eliminated the need for a perimeter buffer. In doing so, the Applicant demonstrated compliance with ECDC 20.35.050(C)(1) rather than their prior attempt to comply with ECDC 20.35.050(C)(2). The Examiner's Re-Hearing Decision recognized that the 2012 application is a different application than the 2007 application with respect to lot setbacks and the presence or absence of a perimeter buffer. However, in order to provide additional clarity, to allay concerns related to an error of judgment (ECDC 20.06.010(3)), and pursuant to ECDC 20.06.010(H), the Re-Hearing Decision will be modified.

ORDER

After further review and consideration of the Request for Reconsideration by the City, the Record for the instant matter, and the Findings and Conclusions set forth in the March 7, 2012 Re-Hearing Decision of the Hearing Examiner, the Hearing Examiner finds:

1. The City's Request for Reconsideration as to issue #1 above (Discussion) is a point of clarification that does not meet the requirements of ECDC 20.06.010. This issue requires no action with respect to the Hearing Examiners Re-Hearing Decision. The Request for Reconsideration is **denied** as to issue #1 above (Discussion).
2. The Request for Reconsideration is affirmed as to issue #2 above (Discussion). The Re-Hearing Decision is hereby **modified** to correct the typographical error in Conclusion of Law #5 as noted in underline/strikeout below.

5. Review Criteria and Application. The Applicants seek approval of a preliminary plat (vested to 2007 ECDC 20.75) and a Planned Residential Development (vested to 2007 ECDC 20.35). The application has been remanded by the Appellate Court on the basis of three issues: perimeter buffer, open space and drainage. Development regulations pertinent to the application also include stormwater management (vested to 2007 ECDC ~~48.35~~18.30 and addressed as part of the preliminary plat approval criteria), critical areas (vested to 2007 ECDC 23.40) and single family residential restrictions (vested to 2007 ECDC 16.20). The issues of single family residential restrictions and critical areas were reviewed in 2007 as part of the original decision (Exhibit 1, Attachments 2007-1, 2007-2 and 2007-12). The scope of the Appellate Court remand did not include a re-review of compliance to then-current ECDC 16.20 or ECDC 23.40 beyond that necessitated by revisions to the original application. Neither of these issues was affected by the revised application. As noted in Conclusion of Law #2 above, those issues that are not specifically related to the Appellate Court's remand are outside the scope of this decision.

3. The Request for Reconsideration is affirmed as to issue #3 above (Discussion). The Re-Hearing Decision is hereby **modified** by replacement of the text for Conclusion of Law #9 with the following.

9. The revised application has resulted in a change to the proposed building setbacks. The Applicant proposes to comply with the setback requirements for the RS-8 zone for all exterior lots. The application has been revised to reflect alternative development standards for building setbacks for only the interior lots. The interior lots will retain the alternative building setbacks approved in the 2007 Hearing Examiner

decision while the exterior lots will be built to reflect standard building setbacks in the RS-8 zone.

4. The Request for Reconsideration is affirmed as to issue #3 above (Discussion). The Re-Hearing Decision is hereby **modified** by replacement of the text for Conclusion of Law #10 with the following.

10. The revised application conforms to the standard setbacks allowable in the RS-8 zone for all exterior lots. The revised application conforms to ECDC 20.35.050(C)(1). Compliance with ECDC 20.35.050(C)(2) is no longer required. No other substantive changes are proposed beyond the resizing of the stormwater vault. The stormwater vault is underground and does not affect the visual character of the PRD. The two alternative development standard establishment criteria impacted by the revised application are the provision of a 'greater buffering of buildings, parking and storage areas than would otherwise be provided through the subdivision process' (ECDC 20.35.040(A)(1)) and the alteration of exterior setbacks (ECDC 20.35.040(B)). The revised application has removed any request for a reduction in the setbacks from exterior lot lines. As noted in the Staff Report (Exhibit 1, page 6), pursuant to MDNS Condition #4 (Exhibit 1, Attachment 9 of Attachment 2007-1) additional landscaping will be provided along the exterior perimeter of the PRD to act as visual buffering. All other alternative development standard establishment criteria are met in the 2007 Hearing Examiner Conditions of Approval (Exhibit 1, Attachment 2007-2) as adopted herein and amended where noted below.

5. The Request for Reconsideration is affirmed as to issue #3 above (Discussion). The Re-Hearing Decision is hereby **modified** by replacement of the text for Conclusion of Law #11 with the following.

11. As in Conclusion of Law #10, a limited number of the PRD decision criteria are affected by the revision of the original application. The revised application conforms to the setback requirements of the underlying RS-8 zone for all exterior lots and thereby eliminates the requirement for a perimeter buffer. The revised project complies with ECDC 20.35.050(C). In the original application, the Applicant overlapped the then-required perimeter buffer with the required open space. Both the Superior Court and the Appellate Court pointed to the plain language of the code that prohibited the inclusion of a required landscape buffers from the open space total. The lot layout has not been altered since 2007 with the exception of removing the proposed perimeter buffer and altering the exterior lot setbacks to meet the standard setbacks in the RS-8 zone. The resulting four open space tracts, without the landscape buffer, are sufficient to meet the 10% open space requirement.

Dated this 19th day of March, 2012.

A handwritten signature in black ink, appearing to read "Emily Terrell", is written over a horizontal line.

Emily Terrell, AICP

Edmonds Hearing Examiner Pro Tem

Appeal Right

Pursuant to ECDC 20.03.010(G), the effect of this decision is to recommence the time period for appeal for all parties. This decision is not subject to a motion for reconsideration.

This decision is final and subject to appeal to the City Council by closed record review as governed by ECDC 20.01.003(B). Appeal deadlines are short (14 days from issuance of the decision) and the courts strictly apply the procedural requirements for filing an appeal.